ADMINISTRATION of TERRITORIAL COURTS

A REPORT TO
THE CHIEF JUSTICE
OF THE TERRITORIAL
SUPREME COURT

Henry P. Chandler

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PREFACE

This report was addressed by Mr. Chandler to the Honorable Philip L. Rice, Chief Justice of the Supreme Court of the Territory of Hawaii. It was prepared and distributed to members of the territorial legislature in mimeographed form. In consideration of the importance to the governance of Hawaii of Mr. Chandler's report, and therefore of the desirability of making it available to a wider audience in a more durable format, funds were provided for this publication by Governor Samuel Wilder King.

Mr. Chandler, recently retired as director of the Administrative Office of the United States Courts, was retained by the Chief Justice to survey the administration of justice in Hawaii and to recommend means for its improvement. In reporting to Chief Justice Rice on April 2, 1957 he noted the way in which he went about his task.

> Since I arrived in Honolulu on the 25th of February I have tried to inform myself about the courts by every means in my power. I have visited every island in which there is a headquarters of a circuit court, Kauai, Maui, and Hawaii, as well as Oahu, and talked with all of the circuit judges. I attended a conference of the district magistrates of the Territory held in Honolulu on March 8th and 9th, and I have talked besides with a number of the magistrates in the different islands as I have had opportunity.
>
> I have talked with the greater number of the lawyers practicing in Maui, the island of Hawaii, and Kauai who came together in meetings while I was there. In Oahu where that was obviously not possible, I have interviewed representative lawyers engaged in different types of practice, including active participants in bar associations of the Territory and the nation. I have spoken with a few laymen, and I wish that there had been time for me to see more because the attitude of the public toward the courts which serve it is significant. I have examined such statistics concerning the business of the courts as were available, includ-

ing some that were especially prepared at my request when the published statistics seemed not very revealing.

After concluding his study, Mr. Chandler appeared before the Judiciary Committees of both houses of the territorial legislature to discuss the legislation which he recommended. He also addressed the Honolulu Bar Association before leaving Hawaii on April 13, 1957.

In a long career of private practice and public service, Mr. Chandler has developed an admirable style, at once direct and elegant, which dares to reestablish in governmental reports the first person singular. Only minimal changes have been made in preparing his manuscript for publication.

Robert M. Kamins, Director
Legislative Reference Bureau

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Chapter 1

The Need for Improved Court Administration

From what I have been able to learn about the courts of the Territory of Hawaii, there is one conclusion that stands out: they are disjointed to an extreme degree. There is no such thing as a unified judicial system. Responsible direction is lacking not only for the separate courts as parts of a whole, but even for the one circuit court that presently has more than one judge, the Circuit Court for the First Circuit, within itself.

PRESENT ADMINISTRATIVE PRACTICE

The Supreme Court possesses power under the statutes to prescribe rules of civil and criminal procedure (Revised Laws of Hawaii 1955, Sections 214-14 to 214-21) and under Section 214-14 it has adopted the civil rules which are now in effect. There are provisions of the statutes granting the power to prescribe rules of civil procedure and criminal procedure, which might seem to be broad enough in their terms to empower the Supreme Court to lay down rules for the administration of the inferior courts. (Sections 214-16 and 214-20) But they are set in a context of the practice in civil and criminal cases, and in any case the Supreme Court has not undertaken (with apparently one brief exception) to regulate the administration of the other courts. Its power to do so is far from explicit as it is in jurisdictions in which such power is recognized--the State of New Jersey, for instance.

Also the Chief Justice possesses some powers and duties of an administrative nature. He makes reports to the legislature at each regular session of the "business of the department and of the administration of justice throughout the Territory" (Section 213-1).

The Chief Justice appoints the district magistrates (Section 216-1). Inasmuch as the term of the magistrates is two years (Section 216-2), this gives him an effective power to regulate the administration of the district courts. Although a magistrate can be removed only by the Supreme Court when

it deems such action "necessary for the public good," the regulative power of the Chief Justice by virtue of his power to appoint district magistrates, is substantial.

The Chief Justice has express power to assign a circuit judge to serve in another circuit whenever this is necessary on account of a vacancy in the office of the regular judge or he is disqualified or there is congestion, or the assignment is advisable "for any other reason." (Section 215-12)

But in the greater part of the area of administration of the courts of the Territory, there is no effective control anywhere. There are no rules of the Supreme Court governing such matters as the arrangement of cases on calendars, the management of the calendars for the purpose of utilizing the time of the judges most effectively, the times of sessions of courts, both the hours on court days and the times of vacations, arrangements for the hearing of motions, and the practice in reference to pretrial conferences.

The power of the Chief Justice to assign circuit judges is limited to assignments among circuits. It is not given to him in reference to assignments of judges of the First Circuit from one calendar to another, the place where there is the greatest need. The Chief Justice presents and explains to the legislature the budget for the Supreme Court. But each of the other courts, even the circuit courts for the different circuits, presents its own budget and there is no coordinated budget for the system of courts.

The Chief Justice is empowered to designate one of the judges of the Circuit Court for the First Circuit as administrative judge for each term of court (Section 215-3), and does so. The administrative judge according to the statute shall assign cases in the court to the judges "by reason of disqualification or other reason according to law." In practice the power of the administrative judge, except for one relatively short period, has not been exercised for the purpose of effective management of the calendars and expedition in the dispatch of the judicial business. From that standpoint the administrative judge is such in title only.

There is no uniform system of judicial statistics. The statistics furnished to the Chief Justice and published by him periodically in connection with his reports, are not such in many instances as to show the real state of the work of the different courts.

The administration of the circuit courts of the Territory now presents a serious problem in the First Circuit--the only

circuit court which has more than one judge. There is manifest there a lack of administrative direction which impairs the efficiency of the court, as the following specific practices and conditions demonstrate.

DISADVANTAGE OF ROTATING CALENDARS

The cases in the court are for the most part divided among seven calendars, one for each of the seven judges as follows: one calendar of felony cases; one of misdemeanor cases coming by appeal from the district courts (with which are joined cases in the Land Court taking a minor part of the judge's time); two calendars of civil cases, one even-numbered and one odd-numbered, going respectively to two judges; a divorce calendar; a probate calendar; and the Juvenile Court.

These calendars, except that of the Juvenile Court, are assigned by the judges periodically among themselves. The sixth judge is by statute (R. L. H. 1955, Section 215-3) the judge of the Juvenile Court. It is the custom to assign the other six calendars in rotation. It is said that this gives each judge over the years his share of all the calendars, both the desirable and the undesirable. I was informed, and it seems to be common knowledge in Honolulu, that the probate calendar is most desired, because of the patronage in the form of appointments, sometimes lucrative, connected with the administration of estates, that it carries.

As far as I have observed, no court can attain a high degree of efficiency that operates in such a manner. The most eminent scholar in the field of judicial administration in the last half century is generally recognized to be Roscoe Pound, professor successively in different law schools of the first rank, dean for a period of the Harvard Law School, and extensive writer on legal subjects. In a book entitled Organization of Courts published in 1940, he tersely characterized the rotation of calendars as one among a number of ways of wasting judicial time, as follows:

> Another, was a practice of rapid rotation among the judges in a court with a number of coordinate judges whereby they sat in turn in civil jury cases, equity cases, criminal trials, and divorce proceedings. Thus each spent valuable time in learning the art of handling special classes of judicial work, only to pass on to some other special class where it was necessary to learn a new art. Where the

specialist would act with assurance and decision, one who came fresh to a special field of judicial administration, if, as was very likely, his practice at the bar had been mainly in a different one, had to proceed painfully and cautiously. (p. 253)

A younger but also eminent legal scholar in the field of judicial administration is Professor Maynard E. Pirsig of the Law School of the University of Minnesota. In a case book on that subject published in 1946, he cited a case in New York, Ford v. Clarke, 204 App. Div. 5, 197 N.Y.S. 424 (affirmed without opinion, 236 N.Y. 606, 142 N.E. 302), in which the court in 1922 upheld the practice of assignment of justices of the Supreme Court (which in New York is the trial court) by the justices of the appellate division. The plaintiff in the case, one of the justices of the Supreme Court, complained that he had been assigned to the trial of tort and contract cases for a much greater time "than a fair division of the work called for"; that the work should be distributed among the trial justices in such a manner that as nearly as possible assignments to the special term which were more desirable than to the trial term, should be apportioned equally.

In rejecting the plaintiff's contention, the court of the Appellate Division said this:

The power to distribute the work among the 28 trial justices of the First department must of necessity rest somewhere. The object of its exercise is to secure the highest degree of efficiency in the administration of justice, and so promote the interest of the public.

In Professor Pirsig's case book he quotes from a speech of the distinguished lawyer, Elihu Root, in the Constitutional Convention of New York of 1894, opposing a proposal to continue the practice then followed under which the justices of the Supreme Court arranged among themselves for the distribution of the work. Mr. Root said in part:

I do not wish to say anything against any justice of the supreme court, but they are the only body of public officers that I know of anywhere who have the absolute power to determine what they shall do, when and where they shall do it, and whether they shall do it or not. I do not believe that a judicial system is perfect unless it provides for some way

in which duties may be prescribed, which it shall be incumbent upon a justice of the supreme court to perform.

Mr. Root concluded:

> But there ought to be some power which the citizen can hold responsible for the performance of judicial work, and some place to which the citizen can go if it is not performed, with judges the same as with anyone else. (Pirsig, Cases on Judicial Administration, pp. 478-482)

LACK OF PLANNING

The lack of any responsible direction of the Circuit Court for the First Circuit with its seven judges, has the results that would be expected: differences and often working at cross-purposes among the judges and failure to adopt any concerted plan for the efficiency of the court as a whole. Team work is as necessary for good results in a court as it is in any other enterprise involving the participation of a number of persons. It cannot exist without organization.

Once a calendar is assigned to a judge in the First Circuit, the way in which he shall bring the cases on for trial, how he shall arrange for the hearing of motions, whether he shall try to keep his scheduled time on the bench usefully employed, are matters for him alone. His administrative practices are not subject to regulation by any other authority, neither by the Chief Justice nor by the administrative judge of the court. The same is true of his standard of punctuality in observing court hours and of the times when he shall take vacations and the length of them.

RESULTING UNCERTAINTY AND DELAYS

The results are almost uniformly unsatisfactory according to the representative lawyers with whom I have talked. There can be no certainty about the time when civil cases will be reached for trial. One practice is, around the beginning of the year, to hold a call and make settings of civil cases throughout the year. Other cases when they become at issue, are placed on a ready calendar. That means little because in the normal course of events such cases will not be reached until another year.

Of course some of the cases that have been set on the call will not be tried for one reason or another, such as settlement. But as said before, there is no system for filling the time released with other cases. Sometimes a judge will put a case recently filed down for trial at the request of counsel. But in the absence of any announced standard for such advancement, the hearing of a particular case out of order is likely to cause resentment on the part of counsel in other cases on the ready calendar, which in their opinion are equally deserving of immediate trial. At the best attorneys in civil cases appear to be in a state of uncertainty as to when their cases will come on for trial, or whether they will come on at all without long delay.

Another complaint of lawyers is that there is no regular system for the presentation and decision of motions. In consequence lawyers say that they frequently have to spend an undue amount of time in these preliminary steps in litigation, many of which involve little more than matters of course.

In addition to the delay in the trial of civil cases, there are often, according to the bar, injurious delays between the submission and decision of cases in the First Circuit tried by the court without a jury. There is no requirement corresponding with the provision in the federal system that district judges shall report to the Administrative Office of the United States Courts for the information of the judicial council consisting of the judges of the court of appeals of the circuit acting in an administrative capacity, cases and motions held under advisement more than 30 but not more than 60 days, and the number so held more than 60 days. Judges are invited, if they desire, to explain any reasons for the delay in cases held under advisement more than 60 days. There is a recognized duty in the judicial councils to take appropriate measures to bring about the prompt disposition of any matters which from such reports, may appear to have been unreasonably delayed. This provision in the federal system has proved efficacious.

LOOSENESS IN COURT HOURS AND VACATIONS

It is said that there is frequent laxity in observing the scheduled court hours, that judges will sometimes remain in their chambers for considerable periods, occasionally running up to an hour or even longer, after the regular time for opening court, keeping the persons concerned, parties, lawyers, jurors and witnesses waiting. It need hardly be said that not only is this unjust to the persons inconvenienced, but that because per-

sons called into court are taken away from their regular work, often important, such delays militate against the producing power and the economy of the Territory.

There is general comment among lawyers in the First Circuit that vacations of judges are taken at irregular times and occasionally for longer periods than is reasonable in view of the state of the calendars. From what I have learned, it is my impression that most of the circuit judges in the First Circuit do not take longer vacations than are warranted. A judge is doing work which is taxing to the nervous system. To function best he needs occasional periods for relaxation and a change of thought. He also needs some free time for reading in the course of a year, more than he can usually take during his weeks of duty, in order to keep abreast of developments not only in the law but more broadly in the society and the world of which the courts are a part.

Even so, a practice under which individual judges determine for themselves when they will take vacations and how long is all wrong. The seasons and length of vacations should be regulated by system adapted to the conditions of the judicial business and understood by the bar and the public so that they can plan accordingly. In the federal system the Judicial Conference of the United States, composed of the Chief Justice of the United States and the presiding judges of the United States courts of appeals, adopted a resolution at its annual meeting in September of 1956, declaring it to be the "policy of the courts of the United States that in those circuits or districts in which the disposition of judicial business is not upon a current basis, judges' vacations should not exceed one month per annum."

SUMMARY

To sum up this part of the report: the present practice in the Circuit Court of the First Circuit under which the judges arrange the work among themselves, without any higher regulation, tends inevitably to put the desires of the judges above the efficient service of the public. It is plain that there are judges in the First Circuit who work hard and dispatch work effectively. But where there is no effective supervision, there is bound to be disparity in effort. Notwithstanding the diligence and earnestness of some judges, the results that always follow from lack of responsible direction are manifest in the court as a whole of the First Circuit: slackness, waste of judicial time, and falling short of the performance of which the court, under a better system, is capable.

Chapter 2

The Way to Improvement

As the difficulties which appear in the administration of the Circuit Court for the First Circuit, the only court with a number of coordinate judges, spring mainly from the lack of responsible direction, the way to improvement is manifestly to provide for such direction. I recommend that this be done by three fundamental provisions as follows:

1. Grant to the Supreme Court of the Territory the power to make rules governing the administration of all courts in the Territory in addition to the power to make rules governing civil and criminal procedure and practice previously granted to it. (R. L. H. 1955, Sections 214-14 to 214-21)

2. Make the Chief Justice of the Supreme Court in truth and in fact the administrative head of the judiciary department, and grant to him the powers necessary to regulate effectively the courts of the Territory in accordance with the rules of the Supreme Court.

3. Empower the Chief Justice to appoint for his assistance an administrative officer of the courts to handle details and obtain information and make recommendations to him concerning the operation of the courts.

These three provisions correspond with the fundamental features of the organization of the courts of the State of New Jersey, which in less than ten years under the strong direction of Chief Justice Arthur T. Vanderbilt, have come from being among the most backward in the United States to being in the forefront in efficiency. The same pattern is followed and is now in operation with notable success in the Commonwealth of Puerto Rico under its Judiciary Act which took effect simultaneously with its constitution in 1952. The provisions in reference to the Chief Justice as administrative head of the courts and the appointment of an administrative officer of the courts are found in substance in Section 5 of Article V of the proposed

Constitution of the State of Hawaii agreed upon by the delegates to the Convention in 1950. There are similar provisions in Sections 15 and 16 of Article IV of the proposed constitution of the State of Alaska, agreed upon by the delegates to the Alaska Constitutional Convention in 1956.

I recommend in addition to the three foregoing provisions a fourth which, while not so essential, will in my judgment be beneficial: namely, provision for a judicial council, advisory in nature and broadly representative of the citizens of the Territory, to give opportunity from time to time for an expression of the opinion of the public concerning its courts.

These four provisions are contained in a bill, a copy of which is appended to this report as Bill 1 and which I recommend. I will now discuss them.

ADMINISTRATIVE RULE-MAKING POWER

Chief Justice Vanderbilt in a little book entitled The Challenge of Law Reform published in 1955, referred to the provision of the New Jersey Constitution granting to the Supreme Court the power to prescribe rules of administration for all the courts in the state as follows:

> In matters of administration the Supreme Court therefore acts as the policy-making body for the judicial system, occupying a position in the administration of the courts comparable to that of the board of directors of a business corporation.

A comparable provision for this Territory, appearing in Section 214-13 of the Revised Laws of Hawaii 1955, would be amended by Section 2 of the accompanying Bill 1. Aside from continuing with slight changes the present provisions of Section 214-13, it would expressly confer power to make rules "governing the administration of other courts." Under this power it is contemplated that the general policies followed in administering the other courts of the Territory would be determined by the Supreme Court. These rules would naturally deal with such matters as the system of arranging cases on calendars and managing the calendars in a way to bring about the most efficient use of the time of the judges, the method of handling motions, the hours of court and times of judicial vacations, and the nature of the reports to be rendered by the judges concerning the performance of their work and the state of their business.

The rules of the Supreme Court might also well deal with the subject of pretrial conferences. Rule 16 of the Hawaii Rules of Civil Procedure (adopted by the Supreme Court, effective June 14, 1954) follows Rule 16 of the Federal Rules of Civil Procedure in authorizing pretrial procedure. But in the federal system the Judicial Conference of the United States has endeavored actively through the continuous service of a committee on the subject throughout recent years, and through strong recommendations of the Conference itself, to promote the pretrial procedure. It has done this because of a conviction that the procedure shortens the time for the trial of cases and furthers the ends of justice. At its annual meeting in September 1956 the Conference resolved that:

> It is the sense of the Conference that pretrial should be used in every civil case before trial except in extraordinary cases where the district judge expressly enters an order otherwise.

Chief Justice Vanderbilt has said repeatedly that the general use of pretrial conferences in civil cases is one of the principal reasons for the success of the New Jersey trial courts in attaining currency or close to it in recent years. Justice William F. Brennan of the Supreme Court of the United States, who came to that court because of his exceptional accomplishments as a judge in New Jersey, has testified to the same effect. Speaking before the Chicago Bar Association in November 1956, he said of pretrial discovery and pretrial conference practice:

> As operated in New Jersey they may have unquestionably played a large part, not only in eliminating calendar congestion but perhaps of even greater importance, in reducing drastically the hazard that maneuver or surprise rather than justice and right will determine the outcome of a cause. (Chicago Bar Record, December 1956, p. 106)

Pretrial conference is said to be used only slightly in the Circuit Court for the First Circuit. The reason given is that the judges on the civil calendars are so hard pressed that they have no time except to hear the cases that come to them from day to day. It is believed that some time spent in pretrial would be more than saved in the later trial of the cases, also that the revelation of the strength and weakness of both sides

to each other at the pretrial conferences would be conducive to settlements and the avoidance of trial altogether, without the slightest pressure from the court. It is in courts where there is a heavy backlog that in other jurisdictions pretrial conferences have proved most helpful. At any rate a more general use of the practice in Hawaii would be something for the Supreme Court to consider, if it had the power to regulate by rules the administration of the trial courts.

SUPERVISION OF COURT ADMINISTRATION BY CHIEF JUSTICE

Section 213-1.5 of the Revised Laws of Hawaii 1955, provided for by Section 1(b) of the recommended Bill 1, would make the Chief Justice of the Supreme Court the administrative head of the judiciary department, and subject to rules adopted by the Supreme Court, would grant to him certain specific powers as well as power to do all other acts "necessary or appropriate for the administration of the department." The section would continue his present duty to report to the legislature at each regular session concerning the judicial business and "the administration of justice throughout the Territory." The broad purpose of the proposed section is expressed in the sentence, "He shall direct the administration of the department, with responsibility for the efficient operation of all of the courts and for the expeditious dispatch of all judicial business."

This is in accordance with the unanimous consensus of informed judgment concerning what is necessary for an effective judicial system. In his book Organization of Courts, Professor Pound says:

> Supervision of the judicial-business administration of the whole court (referring collectively to all courts from the highest to the lowest) should be committed to the Chief Justice, who should be made responsible for effective use of the whole judicial power of the state. (p. 284)
>
> Divided responsibility is no responsibility. Concentration of responsibility in a Chief Justice with corresponding power will correct, indeed will compel correction of, many abuses which have grown up because no one had the responsibility for preventing or removing them. (pp. 289-290)

In his cases on Modern Procedure and Judicial Administration published in 1952, Chief Justice Vanderbilt says:

> A judicial system is a large statewide business and has all the problems that are present in the operation of any large business enterprise. Like a business it cannot function efficiently without proper administrative control. Just as every business has a president in whom the final administrative authority rests to carry out the policies of its board of directors, so every judicial system must have a single administrative head who has the power and responsibility for making the judicial establishment function efficiently. The administrative power should most naturally and logically be vested in the chief justice. (pp. 1252-1253)

The first of the specific powers granted by the recommended Section 213-1.5 deals with the assignment of circuit judges. Paragraph (a) continues the present power of the Chief Justice to assign circuit judges from one circuit to another. Paragraph (b) supplies the present lack of power to regulate the assignment of the work among the judges of a circuit court with more than one judge. It provides that the Chief Justice in such a court may make assignments of the calendars among the judges for each term of court and from time to time change such assignments or parts of them from one judge to another.

This contemplates that judges will be assigned to the parts of the court in which it is considered that they can work best. It does not mean necessarily that judges will be kept on the same kinds of cases throughout their term of office. There may be occasions when a judge will reasonably desire to move from one kind of work to another and such a transfer will not be detrimental to the court. But it does mean that the assignments will be made with a view to the efficiency of the court, not the personal interests of the judges.

The second part of paragraph (b) gives to the Chief Justice the power to appoint one of the judges of a circuit court with more than one judge (as at present the Circuit Court for the First Circuit) for each term of court as the administrative judge. But whereas, as has been pointed out, the administrative judge now has no real power to direct the administration of the court, the administrative judge under the recommended provision would have the power and correlative duty to "manage the business" of the court, "subject to the rules of the supreme court or the direction of the chief justice."

The placing in the Chief Justice of a court system of the power to assign the judges to the different parts of the work is

uniformly recommended by the authorities on judicial administration. Chief Justice Vanderbilt in The Challenge of Law Reform says:

> In the interest of sound judicial administration, therefore, someone should be authorized to assign the judges to the kind of work which they can best do. Because this power of assignment is a delicate one to be exercised only on mature reflection in the interest of the judicial establishment as a whole, it should be committed to the chief judicial officer of the state and he, in turn, would do well to seek the advice of his colleagues, even though the ultimate responsibility must be solely his. (p. 87)

In May 1956, the Attorney General of the United States convened in Washington a conference on court congestion and delay in litigation, composed of presidents of bar associations and the heads of other organizations concerned with judicial administration. On January 7, 1957 the executive committee of the conference, of which Deputy Attorney General William P. Rogers is chairman, issued a report recommending a number of provisions, the first of which is pertinent here:

> The establishment of centralized administrative supervision of all courts in a single head, preferably the chief judge of a state system, with authority to promulgate uniform court rules, and to assign judges to places where congestion is acute and thereby assure fair division of the work among all available judges. (p. 2)

The power of assignment referred to is placed in the recommended bill in the Chief Justice subject to general policies of administration of the courts to be prescribed by rules of the Supreme Court. This is the system in New Jersey and in other jurisdictions which follow that pattern.

The recommended provision for an administrative judge in a circuit court with more than one judge contemplates that he will act in a way to fulfill another recommendation of the executive committee of the Attorney General's Conference on Court Congestion and Delay in Litigation:

> The adoption of businesslike methods for supervising court calendars that will result in more efficient use of the time of the judges and /to/ give full recognition to the

responsibility of judges to control the progress of litigation from the time cases are commenced until their final disposition. (p. 3 of the report)

The details of a system for managing the calendars under the recommended system will be something to be worked out after the power is granted. But the objective is clear: the development of an orderly system under which as nearly as possible the full time of the judges during their scheduled hours in court will be utilized, the business of the court will be handled expeditiously, lawyers and the public will be able to tell the probable times when the cases in which they are interested will come on, and the general convenience as far as feasible will be promoted.

Paragraph (c) of the recommended Section 213-1.5 empowers the Chief Justice to prescribe for all the courts a uniform system of keeping and periodically reporting statistics of their business. There are now statistics in the different courts, but those that are published do not give information that is vital in weighing the state of the work. Sometimes, notwithstanding the cooperation of the clerk's staff, it is difficult in the extreme to get it. The second recommendation of the Executive Committee of the Attorney General's Conference is for:

> The maintenance in all jurisdictions of uniform and up-to-date judicial statistics. Information should be compiled on the time required from the filing of cases until their final disposition, on how long cases are held after submission until decision, and on how long it takes on the average to have a case decided on appeal.

The recommendation goes on to say that:

> Such statistics should preferably be maintained by the administrative office or staff designated for that purpose. (pp. 2-3 of the report)

This is provided for in the recommended bill in Section 213-1.6 relating to the administrative officer of the courts. But the nature of the statistical system to be established is something for the Chief Justice to determine upon such information and expert advice as can be furnished to him by the administrative officer.

Paragraph (d) of Section 213-1.5 of the recommended bill puts upon the Chief Justice the duty of procuring from all of the different courts except the district courts estimates for their appropriations, of reviewing and revising them with the cooperation of representatives of the courts concerned so as to make them consistent and equitable, and finally of presenting them (together with the estimate for the Supreme Court) as collectively constituting a unified budget for the judiciary except the district courts. It can hardly fail to be helpful both to the courts and to the Legislature in considering the financial provision to be made for the judiciary, to deal with the problem as a whole rather than with the parts separately. Sound policy requires this. The district courts are excepted because the cost of those courts is met by the counties. The time may come when they also can be included.

AN ADMINISTRATIVE OFFICER OF THE COURTS

The primary provision of Section 213-1.6 contained in the recommended bill is that:

> The chief justice, with the approval of the supreme court, shall appoint an administrative officer of the courts to assist him in directing the administration of the judiciary department.

It also provides that the administrative officer shall serve "during the pleasure of the chief justice." The proposed constitution for the State of Hawaii establishes a public policy of this nature. Section 5 of Article V, referring to the chief justice, provides that: "With the approval of the supreme court he shall appoint an administrative director to serve at his pleasure."

Similar officers are basic in the court systems of New Jersey and Puerto Rico and in the judicial article of the proposed constitution of the State of Alaska (Section 16 of Article IV). An administrative officer of the courts is also among the recommendations of the Executive Committee of the Attorney General's Conference (p. 2 of the report).

In his Cases on Modern Procedure and Judicial Administration, Chief Justice Vanderbilt says:

> It should be quite obvious that a chief justice charged with the responsibility of administration cannot personally attend

to the multitude of problems incident to running a state-wide business in every county and in every community in the state if he is to perform his normal judicial duties as well. Competent administrative service is essential. There must be an adequately manned administrative office headed by an administrative director who must not only have executive ability and be skilled in the dispatch of business, but who must also be a good lawyer and a diplomat versed in the ways of judges. (p. 1253)

You have found that as conditions are, administrative matters, in relation to the different courts, take a substantial amount of time and draw you away from your judicial work in the Supreme Court more than is desirable. If you are to exercise the responsibility of directing head of the court system, the support of a capable administrative officer will be essential.

The specific functions of the administrative officer of the courts of Hawaii prescribed in paragraphs (a) to (e) inclusive of Section 213-1.6 as recommended, are related to the principal functions of the Chief Justice as the administrative head of the courts. The bill contemplates that the administrative officer will assist the Chief Justice among other ways, by keeping him informed of the way the courts are working and suggesting improvements, by supplying him with the knowledge needed to exercise intelligently his power of assigning judges, and by studying for the Chief Justice the estimates of the courts for appropriations.

The administrative officer should familiarize himself with the work of the clerks of courts and their present system of record keeping and recommend to the Chief Justice a uniform system of judicial statistics which, after one is formulated that meets his approval, it will be for the Chief Justice to prescribe. From year to year it will be for the administrative officer to collect from the courts and report to the Chief Justice with his analysis, statistical and other data concerning the business of the courts. The clerks of courts will continue to prepare the statistics for the respective courts, but in accordance with a uniform system.

It is apparent that the duties of the administrative officer of the courts will call for a lawyer of ability, knowledge of administration, sound judgment, and a persuasive personality. The responsibility for decision in the matters with which he deals will be in the Chief Justice. Even so he will need to be a person of exceptional parts and the salary should be such as

to attract and hold such a person. The salary in the bill is left blank because of my lack of familiarity with salaries in the territorial government. It should in my judgment be equal to the salaries of the officers next to the top in the executive agencies of the Territory.

The bill provides for the appointment with the approval of the Chief Justice of necessary assistants to the administrative officer, the assistants to be under civil service. At the start all that would be required in the way of assistants, in my judgment, would be a secretary. The bill also provides naturally that "The administrative officer shall be provided with necessary office facilities." I am informed that that would be a rather simple matter, and not involve much expense.

AN ADVISORY JUDICIAL COUNCIL

The recommended Bill 1 provides in the proposed Section 213-1.7 for the appointment by the Supreme Court of a judicial council. The council would be only advisory but it would "give continuing consideration to the administration of justice in the courts of the Territory" and make reports and recommendations periodically to the Supreme Court. The bill provides that the Chief Justice shall be a member and chairman of the judicial council. The number of other members is not specified, but a criterion is given of a number to be fairly representative of the people of the Territory, but not too large to be an efficient working body. The persons appointed shall include laymen as well as judges and lawyers. The members shall receive no compensation for their service on the judicial council but they shall be reimbursed for their expenses in attending meetings.

It is being more and more recognized in the United States that there is need for a better understanding of the work of the courts on the part of the citizens, and that there is opportunity for helpful cooperation between them. Judicial councils composed of judges, lawyers and laymen may provide a medium for that purpose. Through such bodies criticisms of the courts in the public mind can be brought to their attention. If there is reason the causes can be corrected and if not the criticisms can be allayed. Public support necessary for the full effectiveness of the work of the courts can be gained. The recommended provision is aimed to bring about in Hawaii as time goes on these beneficial relations between the people and their courts.

Chapter 3

Additional Judges in First and Third Circuits

It appears to me from what I have observed during my stay in the Territory that there is need for two additional judges in the Circuit Court for the First Circuit and one additional judge in the Circuit Court for the Third Circuit, and I recommend that provision be made for this increase. In this I concur in the recommendations in your report as Chief Justice for the years 1955-1956 (pp. 3-4). Legislative measures to provide for the additional judgeships recommended are submitted and copies are attached to this report as Bills 2 and 3.

THE FIRST CIRCUIT

According to data concerning the condition of the calendars of the Circuit Court for the First Circuit for the years 1955-1956, prepared for me by the Court Archivist from the records in his office, the number of civil cases disposed of in each of those years (not including divorce cases and some other classes of cases civil in nature) fell substantially short of the number filed, so that the backlog of such cases pending has risen steadily from 1053 on January 1, 1955, to 1322 on January 1, 1956, and 1502 on December 31, 1956. The last number approached twice the number of civil cases disposed of in 1956 (832), so that at the current rate of disposition it would take the court nearly two years to dispose of the backlog irrespective of the new cases coming in at the rate of over 1,000 a year. This is altogether too long for justice.*

Moreover, I am informed that the rate of disposition of civil cases in 1956, over 400 for each of the two judges assigned to the civil calendars with such aid as could be given by judges on other calendars, is much above any rate which can be sustained. The number of civil cases disposed of in 1955 was 657, or 328 for each of two judges. My information is that the ex-

*For further data in this connection see Honolulu Circuit Court Congestion, Report No. 1, 1952, Legislative Reference Bureau, Territory of Hawaii.

ceptionally high number of civil cases disposed of in 1956 is attributable largely to the fact that cases which, although dead or dormant, had been kept on the calendars, especially cases which were subject to automatic dismissal under the statute because they had remained untried for six years after being placed on a calendar (R.L.H. 1955, Section 231-4), were wiped off in that year. Now that the proportion of live cases in the civil calendars is higher it is certainly probable that the potential output per judge will go down.

With 1,000 or more civil cases a year being filed and a backlog of 1,500 such cases, it would appear that there is need for the assignment of at least four judges instead of two as at present to the trial of civil cases, in order to attain anything like the disposition within six months after the commencement of suit, recommended as a standard of currency in the report of the Executive Committee of the Attorney General's Conference (p. 5). If two judges are added to the court they will of course be available for assignment to the parts of the work where they are most needed. But at present the need is in the civil calendars.

Although the need for reinforcing the judges handling the civil calendars seems to be generally recognized, the question has been raised whether perhaps a greater share of the civil litigation might not be handled by judges on other calendars. This may warrant study by those responsible for the administration of the court. But the immediate prospect along that line appears to me to be too nebulous to predicate policy on it.

A fact which is pertinent in considering the load of the court in the First Circuit is the steady increase in the population of Honolulu. Although there is no precise correspondence between population and litigation, the tendency of an increase in the number of people is to bring an increase in the business of the courts. Probably more significant is the remarkable increase in the number of lawyers, not only in the First Circuit, but in other parts of the Territory, which has occurred in recent years. With more lawyers persons become better informed of their rights or supposed rights and more matters are likely to be taken into court.

According to a report issued by the American Bar Foundation in December 1956, based on information furnished by the Martindale-Hubbell Directory, the percentage of lawyers listed in that directory increased between 1949 and 1955 more rapidly in Hawaii than anywhere else in the United States, 93.19 per cent compared with an average national increase of 29.44 per

cent. Consequently the per capita ratio of lawyers to population declined in Hawaii from 1 to 2616 persons in 1949 to 1 to 1283 persons in 1955.

There is abundant reason in the experience of other jurisdictions which have improved the administration of their courts to believe that if that course is followed in the First Circuit the production of the court here can also be increased substantially without strain. But this will take time. Meanwhile there are litigants entitled to trial. Many of them have already been waiting overlong and they ought not to be asked to continue to wait. There is a public interest in prompt justice which, as I see the matter, calls for two additional judges for the First Circuit.

THE THIRD CIRCUIT

Until 1943 there were on the Island of Hawaii two circuits--the third and fourth--each with a circuit court and a circuit judge. Then they were consolidated into what is now the Third Circuit comprising the entire island and served by one circuit judge with headquarters at Hilo. The opinion of informed persons appears to be unanimous, that the time has now come to provide again for two circuit judges. It is not proposed to set up another circuit as formerly, but to provide for another judge of the existing circuit. That is the economical way to meet the need.

The provision appears to be clearly necessary in order to enable the court to handle its business with reasonable promptitude. The large size of the island and the fact that the court has to sit in four places at considerable distances from one another put an excessive burden on the one judge. Early in January, Judge Luman N. Nevels, Jr., the judge of the court, had scheduled trials for every business day in 1957, five days a week with the exception of one and one-half weeks. While some of the trials doubtless will not occur for the usual reasons, other cases will be coming on which will more than take their places. Besides, such a schedule is too exhausting to maintain and it does not allow time for the study and reflection which are necessary for the best work of a judge in the long run.

Judge Nevels is young, active, and giving himself to his work with great enthusiasm and complete devotion. He is going much beyond the reasonable call of duty. Even so the backlog of matters pending before him nearly doubled between 1955 and

1956, according to information furnished to me by the clerk of the court, increasing in the year from 427 to 808. Prompt dispatch of the business requires the service of an additional judge. When provision is made for a second judge, any system adopted for the administration of a court with more than one judge will of course apply to the Third Circuit as well as the First.

Chapter 4

Concluding Observations

The district courts are not discussed in this report because it has not seemed advisable at this time to recommend any general change in their administration. I cannot forbear, however, to express my respect for the excellent way in which these courts appear to be conducted. As the courts which come closest to the people, they are very important to the good order and contentment of the population of the Islands. It is greatly to the credit of Hawaii that it provides for the compensation of the district judges or magistrates by salary, not by fees, thus putting them in an impartial position.

Most of the magistrates are trained lawyers. It was plain to me that those whom I met who were not lawyers, by long experience in their offices, added to native discretion, an understanding heart, and unselfish interest in the people among whom they worked, were rendering capable and most beneficial service.

THE MATTER OF COST

I have not undertaken in this report to make any precise estimate of the cost of the administrative office nor of the three additional judgeships which are recommended with the attendant supporting personnel. In the limited time available for my study there has not been opportunity to do this. Besides persons who are familiar with the prevailing salary scales and the cost of equipping and maintaining government offices in the Territory are much better qualified to make such an estimate.

But this seems clear: that the cost, while a substantial sum, will be a very minor fraction of the total general appropriations recommended for the Judiciary Department for the coming biennium of $ 2,720,456 and an infinitesimal fraction of the total general appropriations recommended in the general fund operating budget of $138,694,821.

It will not be questioned that the administration of justice, criminal and civil, was one of the earliest purposes for

which governments were instituted and still is one of the primary reasons for their existence. It would not seem that a highly civilized people would wish to refuse to its courts the means to enable them to serve the public efficiently.

IMPROVEMENT—A CONTINUING PROCESS

An improved judicial system can rarely be attained in any society at a single bound. It is the result of a long and never-ending endeavor. All that legislation can well do is to provide for instrumentalities of the courts suitable to carry on the process. Consequently the measures here recommended are general. But if adopted they will bring about responsible direction of the courts of the Territory which will be the first step in advance. Under the stimulus of informed and active public opinion, continuing progress may be expected.

RELATION OF RECOMMENDED PROGRAM TO STATEHOOD

The legislation recommended in this report will be adapted to Hawaii as a state when it is admitted, as well as to the present territorial status. Hawaii is fortunate because the change from a territory to a state will not require any change in the jurisdiction of its courts. The United States District Court for the District of Hawaii is exclusively a federal court and has no local jurisdiction. The courts of the Territory today can readily be converted into the courts of the state when statehood is gained.

Not only will the administration of the courts of Hawaii here recommended be appropriate to Hawaii as a state, but the adoption by the people of Hawaii through their legislature of a plan to lift the conduct of their courts to a high plane of efficiency, will be one of the best proofs that could be given of their qualification for statehood.

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Appendix

Proposed Legislation

BILL 1

AN ACT

RELATING TO ADMINISTRATION OF COURTS: AMENDING TITLE 26 OF THE REVISED LAWS OF HAWAII 1955 BY AMENDING CHAPTERS 213, 214 AND 215.

BE IT ENACTED BY THE LEGISLATURE OF THE TERRITORY OF HAWAII:

SECTION 1. Chapter 213 of the Revised Laws of Hawaii 1955 is hereby amended in the following respects:

(a) Section 213-1 is amended to read as follows:

"Sec. 213-1. Judiciary department. There shall be a department of government, styled the judiciary department."

(b) Three new sections shall be added after section 213-1 to read as follows:

(i) "Sec. 213-1.5. Administration. The chief justice shall be the administrative head of the judiciary department. He shall make a report to the legislature, at each regular session thereof, of the business of the department and of the administration of justice throughout the Territory. He shall present to the legislature a unified budget for all of the courts in the department except the district courts. He shall direct the administration of the department, with responsibility for the efficient operation of all of the courts and for the expeditious dispatch of all judicial business. He shall possess the following powers, subject to such rules as may be adopted by the supreme court:

"(a) To assign circuit judges from one circuit to another;

"(b) In a circuit court with more than one judge, (i) to make assignments of calendars among the circuit judges for each term of court and, as deemed advisable

from time to time, to change assignments or portions thereof from one judge to another, and (ii) to appoint one of the judges, for each term of court, as the administrative judge to manage the business of such court, subject to the rules of the supreme court or the direction of the chief justice.

"(c) To prescribe for all of the courts in the department a uniform system of keeping and periodically reporting statistics of their business;

"(d) To procure from all of the courts in the department except the district courts estimates for their appropriations; with the cooperation of the representatives of the court concerned to review and revise them as he deems necessary for equitable provision for the various courts according to their needs and to present such estimates, as reviewed and revised by him, to the governor and the legislature as collectively constituting a unified budget for all of the courts in the department except the district courts;

"(e) To do all other acts which may be necessary or appropriate for the administration of the department."

(ii) "Sec. 213-1.6. Administrative officer. The chief justice, with the approval of the supreme court, shall appoint an administrative officer of the courts to assist him in directing the administration of the judiciary department. The administrative officer shall be appointed without regard to chapters 3 and 4 and shall serve during the pleasure of the chief justice. He shall hold no other office or employment and shall receive a salary of $ per year. He shall, subject to the direction of the chief justice, perform the following functions:

"(a) Examine the administrative methods of the courts and make recommendations to the chief justice for their improvement;

"(b) Examine the state of the dockets of the courts, secure information as to their needs for assistance, if any, prepare statistical data and reports of the business of the courts and advise the chief justice to the end that proper action may be taken;

"(c) Examine the estimates of the courts, other than the district courts, for appropriations and present to the chief justice his recommendations concerning them;

"(d) Examine the statistical systems of the courts and make recommendations to the chief justice for a

uniform system of judicial statistics;

"(e) Collect, analyze and report to the chief justice statistical and other data concerning the business of the courts;

"(f) Attend to such other matters as may be assigned by the chief justice.

"The administrative officer shall, with the approval of the chief justice, appoint such assistants as may be necessary. Such assistants shall be appointed subject to the provisions of chapters 3 and 4. The administrative officer shall be provided with necessary office facilities.

"The judges, clerks, officers and employees of the courts shall comply with all requests of the administrative officer for information and statistical data relating to the business of the courts and the expenditure of public funds for their maintenance and operation."

(iii) "Sec. 213-1.7. Judicial council. The supreme court shall provide for the appointment of a judicial council. The judicial council shall give continuing consideration to the administration of justice in the courts of the Territory and make reports and recommendations biennially, and oftener if desired, to the supreme court. The chief justice shall be a member and chairman of the judicial council. The supreme court shall appoint, from time to time, such number of other members as it deems necessary to be fairly representative, but not too large to be an efficient working body. The members of the judicial council shall include laymen as well as judges and lawyers. The members of the judicial council shall receive no compensation for their service but they shall be reimbursed for their travelling and other expenses incidental to attending meetings."

SECTION 2. Chapter 214 of the Revised Laws of Hawaii 1955 is amended by amending section 214-13 to read as follows:

"Sec. 214-13. The supreme court may, from time to time, make rules consistent with existing laws for regulating the practice and conducting the business of such court, and also rules consistent with existing laws governing the administration of other courts and thereafter revise such rules at its discretion; but in no case shall have power to impose costs not expressly authorized by law. The supreme court may prescribe for use in the several courts of the

Territory such forms as it may deem convenient and sufficient. If printed at public expense they shall be sold at such prices as will pay their cost."

SECTION 3. Chapter 215 of the Revised Laws of Hawaii 1955 is hereby amended in the following respects:

(a) Section 215-3 is amended by deleting the third sentence of the first paragraph thereof.

(b) Section 215-28 is hereby repealed.

SECTION 4. Effective date. This Act shall take effect upon its approval.

(Introduced as Senate Bill 849 and House Bill 1207 in the 1957 regular session of the territorial legislature.)

BILL 2

AN ACT

RELATING TO CIRCUIT COURTS: AMENDING TITLE 26 OF THE REVISED LAWS OF HAWAII 1955 BY AMENDING CHAPTER 215.

BE IT ENACTED BY THE LEGISLATURE OF THE TERRITORY OF HAWAII:

SECTION 1. Chapter 215 of the Revised Laws of Hawaii 1955 is hereby amended by amending section 215-3 thereof to read as follows:

"Sec. 215-3. First circuit court judges. The circuit court of the first circuit shall consist of nine judges, who shall be styled as first, second, third, fourth, fifth, sixth, seventh, eighth, and ninth judge, respectively. The judge of the circuit court, first circuit, styled sixth judge shall be judge of the juvenile court.

"There may be one session of the court, or several sessions at the same time, each of which may be held by one, but not more than one, of the judges, severally. Judgments, orders and proceedings of any session held by any one of the judges shall be as effective as if only one session was held at a time."

SECTION 2. Until funds for salaries of the eighth and of the ninth judge, respectively, are appropriated by the Congress of the United States, the salary of each such judge shall be paid by the Territory at the rate now or hereafter provided for the judges of the circuit court, first circuit, and sufficient funds to pay said salaries are hereby appropriated from the general fund of the Territory not otherwise appropriated.

SECTION 3. This Act shall take effect upon its approval.

(Introduced as Senate Bill 848 and House Bill 1206 in the 1957 regular session of the territorial legislature.)

BILL 3

AN ACT

RELATING TO CIRCUIT COURTS: AMENDING TITLE 26 OF THE REVISED LAWS OF HAWAII 1955 BY AMENDING CHAPTER 215.

BE IT ENACTED BY THE LEGISLATURE OF THE TERRITORY OF HAWAII:

SECTION 1. Chapter 215 of the Revised Laws of Hawaii 1955 is hereby amended by amending section 215-4 thereof to read as follows:

"Sec. 215-4. Other circuits, judges. The circuit courts of the second and fifth circuits shall consist, each, of one judge, who shall be styled judge of the circuit court of the circuit in which he is located, as, for instance, judge of the circuit court of the second circuit. The circuit court of the third circuit shall consist of two judges, who shall be styled, when there are two, as first and as second judge, respectively, and each as a judge of the circuit court of the third circuit.

"There may be one session of the circuit court of the third circuit, or several sessions of such court at the same time, each of which may be held by one, but not more than one, of the judges, severally. Judgments, orders and proceedings of any session held by any one of the judges shall be as effective as if only one session was held at a time."

SECTION 2. Until funds for the salary of the second judge are appropriated by the Congress of the United States, the salary of such judge shall be paid by the Territory at the rate now or hereafter provided for the judge of the circuit court, third circuit, and sufficient funds to pay said salary are hereby appropriated from the general fund of the Territory not otherwise appropriated.

SECTION 3. This Act shall take effect upon its approval.

(Introduced as Senate Bill 847 and House Bill 1205 in the 1957 regular session of the territorial legislature.)